

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA**

WILLIAM T. COMPTON,
Plaintiff,

v.

Civil Action No. 2:13-cv-15340

KEVIN E. BALL, individually in his
capacity as a Deputy employed by the
Mingo County Sheriff's Department;
MAX J. MOUNTS, individually
in his capacity as a Deputy
employed by the Mingo County
Sheriff's Department;
MICHAEL J. MILLER, individually
in his capacity as a Deputy
employed by the Mingo County
Sheriff's Department;
ROSIE CRUM, in her official
capacity as Sheriff of Mingo County
West Virginia;
MINGO COUNTY COMMISSION,
A political subdivision in the state of
West Virginia;
JEFF D. MATHENY, individually
in his capacity as a Trooper
employed by The West Virginia
Department of Public Safety/
State Police;
THE WEST VIRGINIA DEPARTMENT
OF PUBLIC SAFETY/STATE POLICE,
a statutory created public agency,

Defendants

COMPLAINT

COMES NOW the Plaintiff, William T. Compton, by his attorneys, Robert J. Frank, The
Law Firm of Robert J. Frank & Assoc., LLC, and states and alleges as follows:

I. INTRODUCTION

This Complaint is brought pursuant to 42 U.S.C. §1983, the Fourth and Fourteenth Amendments to the United States Constitution, the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code §29-12A-1, *et seq.*, and common law. On or about July 2, 2011, the Plaintiff William T. Compton suffered severe injuries when Mingo County Sherriff Deputies, Defendants herein, and a West Virginia State Trooper, a defendant herein, unlawfully and violently seized Plaintiff's person, and used overwhelming and objectively unreasonable force against him causing severe injury. Certain Defendants herein observed clearly unconstitutional and illegal conduct of other officers and made no attempt to intervene.

II. JURISDICTION

1. All actions alleged herein occurred within Mingo County, West Virginia.
2. At all times pertinent hereto, the conduct of Defendants was taken under the color of authority, or the pretense of the color of authority as law enforcement officers employed by the Mingo County Sheriff's Department / Mingo County Commission and/or The West Virginia Department of Public Safety/ State Police, governmental entities within the state of West Virginia, and within the Jurisdiction of the United States District Court for the Southern District of West Virginia.
 1. This action arises under the statutes of the United States, USC Title 42 §1983, as stated with more particularity herein.
 2. This action arises under the Fourth and Fourteenth Amendments to the Constitution of the United States as stated with more particularity herein.
 3. This action arises under the statutes and common law of the state of West Virginia as stated with more particularity herein.

4. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, as this action arises under the Fourth and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that Plaintiff seeks redress for deprivations made under color of state law of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that Plaintiff seeks damages under 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; and under 42 U.S.C. § 1988(b) for an award of attorney's fees.
5. Venue is proper in the United States District Court for the Southern District of West Virginia under 28 U.S.C. § 1391(b), because the events giving rise to the claims described in this Complaint occurred within the jurisdiction of this court.

III. PARTIES

6. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.
7. At the time of the incidents alleged herein, Plaintiff William T. Compton (hereinafter "Plaintiff"), was a resident of and domiciled in the County of Mingo, State of West Virginia.
8. At the time of the incidents alleged herein, Defendant Kevin E. Ball (hereinafter "Defendant Ball") was employed as a Deputy Sheriff for the Mingo County Sheriff's Department, which is under the Mingo County Commission. He is sued individually for actions taken under color of state law and within in the course and scope of his official duties as a Deputy Sheriff employed by Mingo County Sheriff's Department.
9. At the time of the incidents alleged herein, Defendant Max J. Mounts (hereinafter "Defendant Mounts") was employed as a Deputy Sheriff for the Mingo County Sheriff's

Department, which is under the Mingo County Commission. He is sued individually for actions taken under color of state law and within in the course and scope of his official duties as a Deputy Sheriff employed by Mingo County Sheriff's Department.

10. At the time of the incidents alleged herein, Defendant Michael J. Miller (hereinafter "Defendant Miller") was employed as a Deputy Sheriff for the Mingo County Sheriff's Department, which is under the Mingo County Commission. He is sued individually for actions taken under color of state law and within in the course and scope of his official duties as a Deputy Sheriff employed by Mingo County Sheriff's Department.
11. Defendant Rosie Crum (hereinafter "Defendant Crum"), is the duly appointed Sheriff of Mingo County, West Virginia and is sued solely in her official capacity.
12. Defendant Crum, in her official capacity, was at all times pertinent hereto, responsible for the hiring, training, policy, and supervision of Defendants Ball, Mounts, and Miller.
13. Defendant Crum, in her official capacity, was responsible for implementing and executing the customs, practices and policies, as stated herein, that were the cause of the constitutional violations committed by Defendants Ball, Mounts, and Miller.
14. Defendant Crum, in her official capacity, formulated the customs, practices and policies, as stated herein, that were the cause of the constitutional violations committed by Defendants Ball, Mounts, and Miller.
15. Defendant Mingo County Commission (Hereinafter "Defendant MCC") is a political subdivision of the State of West Virginia, and as such, is liable for the negligent conduct of its agents and employees, including the Sheriff, the Sheriff's Department, and the employees of the Sheriff's Department, as long as that conduct was carried out within the scope of their Employment. See the West Virginia Governmental Tort Claims and

Insurance Reform Act, W. Va. Code §29-12A-1, *et seq.*

16. Defendant MCC was at all times pertinent hereto, responsible for the hiring, training, policy, and supervision of Defendants Ball, Mounts, and Miller.
17. Defendant MCC was responsible for implementing and executing the customs, practices and policies, as stated herein, that were the cause of the constitutional violations committed by Defendants Ball, Mounts, and Miller.
18. Defendant MCC formulated the customs, practices and policies, as stated herein, that were the cause of the constitutional violations committed Defendants Ball, Mounts, and Miller.
19. The conduct alleged herein to have been committed by employees and/or agents of Defendant MCC are hereby alleged to have been committed by said agents and/or employees acting in the course and scope of their employment authority. The causes of action asserted against Defendant MCC refer to liability for acts performed by agents and employees of said Defendant political subdivision, as well as the implementation of policy relate to how law enforcement and police protection are provided.
20. At the time of the incidents alleged herein, Defendant Jeff D. Matheny (hereinafter “Defendant Matheny”) was employed as a Trooper with The West Virginia Department of Public Safety/ State Police. He is sued individually for actions taken under color of state law and within in the course and scope of his official duties as a Trooper employed by The West Virginia Department of Public Safety/ State Police.
21. That the West Virginia Department of Public Safety/State Police (hereinafter “State Police”) is a statutorily created public agency organized and existing under the law of the State of West Virginia, and is liable for the negligent conduct of its agents and

employees, including Defendant Matheny, as long as that conduct was carried out within the scope of their Employment. See the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code §29-12A-1, *et seq.*

22. Defendant State Police was at all times pertinent hereto, responsible for the hiring, training, policy, and supervision of Defendant Matheny.
23. Defendant State Police was responsible for implementing and executing the customs, practices and policies, as stated herein, that were the cause of the constitutional violations committed by Defendant Matheny.
24. Defendant State Police formulated the customs, practices and policies, as stated herein, that were the cause of the constitutional violations committed Defendant Matheny.
25. The conduct alleged herein to have been committed by employees and/or agents of Defendant State Police are hereby alleged to have been committed by said agents and/or employees acting in the course and scope of their employment authority. The causes of action asserted against Defendant State Police refer to liability for acts performed by agents and employees of said Defendant political subdivision, as well as the implementation of policy relate to how law enforcement and police protection are provided.
26. Plaintiff seeks recovery from the West Virginia Department of Public Safety/State Police under and up to the limits of the state liability insurance coverage as acquired under the authority of West Virginia Code §29-12-5.
27. The term “Defendants” when used without other qualifier shall refer to all Defendants individually and collectively.

IV. FACTUAL ALLEGATIONS

28. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.
29. On July 2, 2011 certain Defendants believed to be Mounts, Miller, and Matheny were called to respond to a reported disturbance at a convenience store.
30. By information and belief the reporting party was the wife or girlfriend or other significant relationship of Defendant Ball. Defendant Ball was likewise called to the scene of the disturbance.
31. Plaintiff Compton was handcuffed and led from the store by Defendant Mounts, Miller, and/or Matheny.
32. As Plaintiff Compton was led, handcuffed behind his back, Defendant Ball stepped between Plaintiff and the other Defendants.
33. Defendant Ball then proceeded to slam Plaintiff Compton's head and face against the hood of a police car repeatedly while screaming words to the effect "if you ever talk to my wife like that again I will F**king kill you." He remained handcuffed behind his back and unable to defend or protect himself as Defendant Ball repeatedly and with great force slammed his face and head into the police car.
34. Defendant Mounts, Miller, and/or Matheny were literally just feet away, but made no attempt to intervene, to stop the unlawful assault by Defendant Ball, or to protect Plaintiff Compton from the unlawful assault by Defendant Ball.
35. The beating Plaintiff Compton received from Defendant Ball was sufficient to cause significant injuries including but not limited to multiple facial fractures and other injuries serious injuries requiring surgical repair.

36. At the time Defendant Ball beat the Plaintiff, Plaintiff was not threatening the Defendants or any third person.
37. At the time Defendant Ball beat the Plaintiff, Plaintiff was not attempting to escape a lawful seizure by law enforcement officers.
38. At the time Defendant Ball beat the Plaintiff, Plaintiff was not posing a risk to officer safety such as to justify Defendant's use of force.
39. The use of force by Defendant Ball was objectively unreasonable under the totality of the circumstances.
40. The use of force by Defendants Ball identified herein was in excess of that required to be used in a good faith effort to maintain and restore discipline and was used maliciously and sadistically for the very purpose of causing harm.
41. This use of force (beating the Plaintiff) constituted a violation of Plaintiffs' Fourth and Fourteenth Amendment rights and is actionable pursuant to 42 U.S.C. §1983.
42. At the time of this unlawful use of force Defendants Mounts, Miller, and Matheny witnessed the unlawful conduct, knew or should have known that it was unlawful, and failed to take any steps to intervene.
43. After his violent seizure and beating by Defendants, Plaintiff was placed in a patrol car and taken to Delbarton City Hall.
44. While still handcuffed behind his back and sitting in a chair, Plaintiff was sprayed with a chemical agent, knocked to the floor, struck with fists, and kicked by Defendant Mounts, Miller, and/or Matheny.
45. Plaintiff was told to "shut up or it will get worse."
46. At the time Defendant Mounts, Miller, and/or Matheny sprayed Plaintiff with a chemical

agent, knocked Plaintiff to the floor, struck Plaintiff with fists, and kicked Plaintiff, Plaintiff was not threatening the Defendants or any third person.

47. At the time Defendant Mounts, Miller, and/or Matheny sprayed Plaintiff with a chemical agent, knocked Plaintiff to the floor, struck Plaintiff with fists, and kicked Plaintiff, Plaintiff was not attempting to escape a lawful seizure by law enforcement officers.

48. At the time Defendant Mounts, Miller, and/or Matheny sprayed Plaintiff with a chemical agent, knocked Plaintiff to the floor, struck Plaintiff with fists, and kicked Plaintiff, Plaintiff was not posing a risk to officer safety such as to justify Defendant's use of force.

49. The use of force by Defendant Mounts, Miller, and/or Matheny was objectively unreasonable under the totality of the circumstances.

50. The use of force by Defendant Mounts, Miller, and/or Matheny was in excess of that required to be used in a good faith effort to maintain and restore discipline and was used maliciously and sadistically for the very purpose of causing harm.

51. This use of force constituted a violation of Plaintiffs' Fourth and Fourteenth Amendment rights and is actionable pursuant to 42 U.S.C. §1983.

52. After being violently seized and beaten while handcuffed, Plaintiff was placed in the back of a police car and taken to the regional jail. On the way the regional jail, Defendant Matheny mockingly sang "Your fought the law and the law won."

53. The use of force against Plaintiff, and each constituent act (i.e. violently seizing Plaintiff, slamming his head against a police car, beating Plaintiff, knocking him to the ground, punching him and kicking him) constituted civil battery committed against Plaintiff by Defendants Ball, Mounts, Miller and Matheny.

54. Defendant Mounts observed Defendants Ball, Miller, and/or Matheny as they used force

against Plaintiff. Defendant Mounts: (1) knew or should have known that other Defendants were violating an individual's constitutional rights, (2) had a reasonable opportunity to prevent the harm, and (3) chose not to act. This failure to act constituted a violation of Plaintiffs' Fourth and Fourteenth Amendment rights and is actionable pursuant to 42 U.S.C. §1983.

55. Defendant Miller observed Defendants Ball, Mounts and/or Matheny as they used force against Plaintiff. Defendant Miller: (1) knew or should have known that other Defendants were violating an individual's constitutional rights, (2) had a reasonable opportunity to prevent the harm, and (3) chose not to act. This failure to act constituted a violation of Plaintiffs' Fourth and Fourteenth Amendment rights and is actionable pursuant to 42 U.S.C. §1983.

56. Defendant Matheny observed Defendants Ball, Miller, and/or Mounts as they used force against Plaintiff. Defendant Matheny: (1) knew or should have known that other Defendants were violating an individual's constitutional rights, (2) had a reasonable opportunity to prevent the harm, and (3) chose not to act. This failure to act constituted a violation of Plaintiffs' Fourth and Fourteenth Amendment rights and is actionable pursuant to 42 U.S.C. §1983.

V. FIRST CLAIM FOR RELIEF

UNLAWFUL SEIZURE OF PLAINTIFF
IN VIOLATION OF THE FOURTH AMENDMENT, 42 U.S.C. §1983

57. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.
58. At all times pertinent hereto, it was clearly established federal law that Plaintiff had a constitutional right to be free from unreasonable seizure of his person by persons acting under color of state law. A seizure of a person becomes unreasonable if affected with objectively unreasonable force.
59. At all times pertinent hereto, each Defendant knew, or should have known, of the aforementioned constitutional rights clearly established under federal law.
60. The seizure of the Plaintiff's person by Defendants Ball, Mounts, Miller, and Matheny as referenced herein was affected with an unnecessary and unreasonable level of violence, was unreasonable, and violated Plaintiff's aforementioned constitutional rights.
61. The unlawful seizure of Plaintiff's person by Defendants Ball, Mounts, Miller, and Matheny caused actual injury in fact to the Plaintiff.
62. Plaintiff suffered injuries, damages, and losses as a result of the Defendants' violations of Plaintiff's federally protected right to be free from unlawful seizure. These damages include, but are not limited to, costs of medical care and treatment due to conduct during and after said entry, humiliation, pain and suffering, loss of enjoyment of life, emotional distress, and has incurred past and future medical expenses.

VI. SECOND CLAIM FOR RELIEF

USE OF UNREASONABLE AND EXCESSIVE FORCE
IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS,
42 U.S.C. §1983

63. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.
64. At all times pertinent hereto, it was clearly established federal law that Plaintiff had a constitutional right to be free from a use of force which was in excess of that required to be used in a good faith effort to maintain and restore discipline and which was used maliciously and sadistically for the very purpose of causing harm.
65. At all times pertinent hereto, it was clearly established federal law that Plaintiff had a constitutional right to be free from a use of force which was unreasonable given the totality of the circumstances under which the force was used.
66. At all times pertinent hereto, each Defendant knew, or should have known, of the aforementioned constitutional rights clearly established under federal law.
67. The use of force by Defendants Ball, Mounts, Miller, and Matheny as referenced herein violated Plaintiff's aforementioned constitutional rights, was in excess of that required to be used in a good faith effort to maintain and restore discipline, was used maliciously and sadistically for the very purpose of causing harm, and was objectively unreasonable under the totality of the circumstances existing at the time of the conduct alleged.
68. The objectively unreasonable use of force by Defendants caused actual injury in fact to the Plaintiff of a "more than de minimis" nature. These injuries include, but are not limited to bruising, lacerations, internal injuries, facial fractures, orthopedic injuries, emotional distress requiring past and future medical treatment.
69. Plaintiff suffered injuries, damages, and losses as a result of the Defendants' violations of

Plaintiff's federally protected right to be free from unreasonable use of force. These damages include, but are not limited to, costs of medical care and treatment due to said unreasonable and outrageous conduct, and Plaintiff has suffered humiliation, pain and suffering, loss of enjoyment of life, emotional distress, and has incurred past and future medical expenses.

VII. THIRD CLAIM FOR RELIEF

BYSTANDER LIABILITY IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS, 42 U.S.C. §1983

70. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.
71. At all times pertinent hereto, it was clearly established federal law that a law enforcement officer has a duty to intervene to protect the constitutional rights of a citizen when he (1) knows that a fellow officer is violating an individual's constitutional rights, (2) has a reasonable opportunity to prevent the harm, and (3) chooses not to act. Failure to act in such circumstances constitutes a violation of Plaintiff's Fourteenth Amendment rights.
72. At all times pertinent hereto, each Defendant knew, or should have known, of the aforementioned constitutional rights clearly established under federal law.
73. Defendants Ball, Mounts, Miller, and Matheny each witnessed other Defendants committing constitutional violations against plaintiff as alleged herein, had an opportunity to intervene, and did not do so. This failure to act was objectively unreasonable under the totality of the circumstances existing at the time of the conduct alleged.
74. The objectively unreasonable failure to intervene by Defendants caused actual injury in

fact to the Plaintiff of a “more than de minimis” nature.

75. Plaintiff suffered injuries, damages, and losses as a result of the Defendants’ violations of Plaintiff’s federally protected right to officer intervention. These damages include, but are not limited to, costs of medical care and treatment due to said unreasonable and outrageous conduct, and Plaintiff has suffered humiliation, pain and suffering, loss of enjoyment of life, emotional distress, and has incurred past and future medical expenses.

VIII. FOURTH CLAIM FOR RELIEF

THE POLICIES AND PRACTICES OF DEFENDANTS DEMONSTRATE A
DELIBERATE INDIFFERENCE TO THE RIGHTS OF PLAINTIFF IN VIOLATION
OF THE FOURTEENTH AMENDMENT, *MONELL*, 42 U.S.C. 1983
DEFENDANT MCC and/or DEFENDANT CRUM

76. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.
77. At all times pertinent hereto there existed a clearly established federal right protecting citizens of the United States from failures of training or supervision of law enforcement officers which rise to the level of a deliberate indifference to the rights of citizens in violation of the due process requirements of the Fourteenth Amendment.
78. As of July 2, 2011 it was clearly established that a governmental entity may be held liable under 42 U.S.C. 1983 for inadequate training of police officers when (1) the officers exceeded constitutional limitations on the seizure of person and/or use of force; (2) the seizure of person and /or use of force arose under circumstances that constitute a usual and recurring situation with which police officers must deal; (3) the inadequate training demonstrates a deliberate indifference on the part of the city toward persons with whom the police officers come into contact, and (4) there is a direct casual link between the

constitutional deprivation and the inadequate training.

79. At all times pertinent hereto, each Defendant knew, or should have known, of the aforementioned constitutional rights clearly established under federal law.
80. As of July 2, 2011, Defendant MCC and/or Defendant Crum were charged with the responsibility of supervising the operations of their personnel, including Defendants Ball, Mounts, and Miller and were obligated to assure that their personnel, including Defendants Ball, Mounts, and Miller, were adequately trained to carry out their duties without violating the Constitutional Rights of United States citizens.
81. On July 2, 2011 Defendants Ball, Mounts, and Miller exceeded constitutional limitations as set forth at length herein. Said constitutional violations occurred under circumstances that constitute a usual and recurring situation with which police officers must deal.
82. Defendant MCC and/or Defendant Crum knew or should have known that their employees would confront usual and recurring situations wherein they needed to make decisions relating to the proper and appropriate use of force, and that the wrong choice by a law enforcement Defendant may cause a deprivation of a citizen's constitutional rights.
83. The conduct of Defendants Ball, Mounts, and Miller as referenced herein demonstrates that they were improperly or inadequately trained in matters relating to seizure of persons, use of force, and officer intervention in constitutional violation. A properly trained law enforcement officer would not have reasonably engaged in the conduct engaged in by Defendants as alleged herein.
84. Defendants' deprivation of Plaintiff's constitutional rights demonstrates an objectively unreasonable failure to train on the part of Defendant MCC and/or Defendant Crum which constitutes a deliberate indifference to the rights of the citizens of the State of

West Virginia, and Plaintiff in particular. This failure to train and or lack of proper training was a direct policy and procedure of Defendant MCC and/or Defendant Crum.

85. Defendant's policies and procedures which led to this inadequate training of officers on seizure of persons, use of force, and officer intervention in constitutional violation was a cause of the constitutional violations as alleged herein. But for the failures of training and supervision, the constitutional violations that occurred herein would not have occurred.

86. Plaintiff suffered injuries, damages, and losses as a result of the Defendants' violations of Plaintiffs' federally protected right to be free from deliberate indifference to the rights of the Plaintiff. These damages include, but are not limited to costs of medical care and treatment due to said unreasonable and outrageous conduct, and Plaintiff has suffered humiliation, pain and suffering, losses of enjoyment of life, emotional distress, and has incurred past and future medical expenses.

IX. FIFTH CLAIM FOR RELIEF

THE POLICIES AND PRACTICES OF DEFENDANTS DEMONSTRATE A
DELIBERATE INDIFFERENCE TO THE RIGHTS OF PLAINTIFF IN VIOLATION
OF THE FOURTEENTH AMENDMENT, *MONELL*, 42 U.S.C. 1983
THE WEST VIRGINIA DEPARTMENT OF PUBLIC SAFETY/STATE POLICE

87. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.

88. At all times pertinent hereto there existed a clearly established federal right protecting citizens of the United States from failures of training or supervision of law enforcement officers which rise to the level of a deliberate indifference to the rights of citizens in violation of the due process requirements of the Fourteenth Amendment.

89. As of July 2, 2011 it was clearly established that a governmental entity may be held liable under 42 U.S.C. 1983 for inadequate training of police officers when (1) the officers exceeded constitutional limitations on the seizure of person and/or use of force; (2) the seizure of person and /or use of force arose under circumstances that constitute a usual and recurring situation with which police officers must deal; (3) the inadequate training demonstrates a deliberate indifference on the part of the city toward persons with whom the police officers come into contact, and (4) there is a direct causal link between the constitutional deprivation and the inadequate training.
90. At all times pertinent hereto, each Defendant knew, or should have known, of the aforementioned constitutional rights clearly established under federal law.
91. As of July 2, 2011, Defendant The West Virginia Department of Public Safety/ State Police was charged with the responsibility of supervising the operations of their personnel, including Defendant Matheny and was obligated to assure that its personnel, including Defendant Matheny, were adequately trained to carry out their duties without violating the Constitutional Rights of United States citizens.
92. On July 2, 2011 Defendant Matheny exceeded constitutional limitations as set forth at length herein. Said constitutional violations occurred under circumstances that constitute a usual and recurring situation with which police officers must deal.
93. Defendant The West Virginia Department of Public Safety/ State Police knew or should have known that their employees would confront usual and recurring situations wherein they needed to make decisions relating to the proper and appropriate use of force, and that the wrong choice by a law enforcement Defendant may cause a deprivation of a citizen's constitutional rights.

94. The conduct of Defendant Matheny as referenced herein demonstrates that they were improperly or inadequately trained in matters relating to seizure of persons, use of force, and officer intervention in constitutional violation. A properly trained law enforcement officer would not have reasonably engaged in the conduct engaged in by Defendants as alleged herein.
95. Defendants' deprivation of Plaintiff's constitutional rights demonstrates an objectively unreasonable failure to train on the part of Defendant, The West Virginia Department of Public Safety/ State Police which constitutes a deliberate indifference to the rights of the citizens of the State of West Virginia, and Plaintiff in particular. This failure to train and or lack of proper training was a direct policy and procedure of Defendant, The West Virginia Department of Public Safety/ State Police.
96. Defendant's policies and procedures which led to this inadequate training of officers on seizure of persons, use of force, and officer intervention in constitutional violation was a cause of the constitutional violations as alleged herein. But for the failures of training and supervision, the constitutional violations that occurred herein would not have occurred.
97. Plaintiff suffered injuries, damages, and losses as a result of the Defendants' violations of Plaintiffs' federally protected right to be free from deliberate indifference to the rights of the Plaintiff. These damages include, but are not limited to costs of medical care and treatment due to said unreasonable and outrageous conduct, and Plaintiff has suffered humiliation, pain and suffering, losses of enjoyment of life, emotional distress, and has incurred past and future medical expenses.

X. SIXTH CLAIM FOR RELIEF

**CIVIL BATTERY/OUTRAGEOUS CONDUCT
STATE LAW CLAIM**

98. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.

99. The conduct of Defendants Ball, Mounts, Miller and Matheny as stated herein constitutes civil battery, willful and wanton conduct, assault, brutality and outrageous conduct against Plaintiff, in violation of West Virginia law.

100. The Defendants are not immune from liability as there is a policy of insurance which provided coverage for the claims asserted by claimant, which are under and up to the limits of the State's liability coverage. Further, there is no immunity for acts which are fraudulent, malicious, or otherwise oppressive.

101. As a direct and proximate result of said conduct of Defendants Ball, Mounts, Miller and Matheny Plaintiff has sustained costs of medical care and treatment due to said unreasonable and outrageous conduct, and Plaintiff has suffered humiliation, pain and suffering, loss of enjoyment of life, emotional distress, and has incurred past and future medical expenses.

XI. SEVENTH CLAIM FOR RELIEF

**NEGLIGENCE
STATE LAW CLAIM**

102. Each and every allegation set forth in the preceding paragraphs is incorporated herein by this reference with the same effect as if re-alleged herein.

103. Defendant MCC and/or Defendant Crum and Defendant The West Virginia Department of Public Safety/ State Police owed Plaintiff a duty of reasonable care. It was

reasonably foreseeable to Defendant MCC and/or Defendant Crum and Defendant The West Virginia Department of Public Safety/ State Police that the Plaintiff and persons similarly situated to the Plaintiff would be harmed as a result of negligence in the hiring, training, supervising and retention of police officers.

104. Defendants, by and through the chain of command, including Defendant MCC and/or Defendant Crum and Defendant The West Virginia Department of Public Safety/ State Police breached that duty as detailed above and incorporated herein, and furthermore by:
- a. negligently hiring Defendants Ball, Mounts, Miller and Matheny;
 - b. negligently training Defendants Ball, Mounts, Miller and Matheny;
 - c. negligently supervising Defendants Ball, Mounts, Miller and Matheny;
 - d. negligently allowing Defendants Ball, Mounts, Miller and Matheny to engage in the conduct as alleged herein.
 - e. negligently failing to comply with federal constitutional standards for use of force against a suspect and a pretrial detainee.

105. As a direct and proximate result of the Defendants' negligence, Plaintiff suffered harm, including personal injuries, extreme emotional distress, medical expenses, severe pain, and continues to suffer damages, and is entitled to recover damages for the same.

XII. DAMAGES

106. As a result of the actions of Defendants as defined above, the Plaintiff has sustained past and future injuries, damages and losses including, but not limited to:
- a. Bodily Injury;
 - b. Physical pain and suffering;

- c. Mental and emotional suffering;
- d. Medical expenses;
- e. Permanent injury, disability, impairment and disfigurement
- f. Loss of enjoyment of life;
- g. Any other relief the court deems just and proper.

Plaintiff is also entitled to recover the following:

- a. Cost of court expended herein, specifically including deposition expenses and expert witness fees.
- b. Pre-judgment, moratory judgment, and post-judgment interest at the highest lawful rate.
- c. Award of reasonable attorney fees and costs incurred in this action, including, but not limited to fees awarded pursuant to 42 U.S.C. Section 1988;
- d. Exemplary and/or punitive damages against the individual defendants named herein;
- e. Such other and further awards as the Court deems just and proper under the circumstances.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment against the Defendants for compensatory, general, and exemplary damages in an amount to be proven at trial, together with costs of suit and reasonable attorney's fees as provided by law, and for such other relief as this Court deems just and proper.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendants herein upon each and every claim for relief asserted herein.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY ON ALL ISSUES HEREIN.

Respectfully submitted this 24 day of June, 2013.

BY William T. Compton,
through counsel:

/s/ Robert J. Frank
Robert J. Frank, No. 10654
LAW FIRM OF ROBERT J. FRANK, LLC & ASSOC.
205 W. Washington Street, Ste. 1
Lewisburg, WV 24901
Telephone: (304) 520-4925
Telephone: (304) 520-4926

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

William T. Compton

(b) County of Residence of First Listed Plaintiff Mingo
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert J. Frank, Esq.
205 W. Washington Street, Ste. 1, Lewisburg, WV 24901
304-520-4925

DEFENDANTS

Deputy Kevin E. Ball, Deputy Max J. Mounts, Deputy Michael J. Miller,
Sheriff Rosie Crum, Mingo County Commission, Trooper Jeff D.
Matheny, The West Virginia Department of Public Safety/State Police

County of Residence of First Listed Defendant Mingo
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983; 42 USC 1988

Brief description of cause:

Excessive Force, Unlawful seizure, 4th and 14th Amendment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____